





Report to the Auburn City Council

Action Item

Agenda Item No.

12

 City Manager Approval

To: Mayor and City Council Members
From: Bernie Schroeder, Director of Public Works 
Date: April 14, 2014
Subject: Lease for a Portion of Old City Hall to the Auburn Chamber of Commerce

The Issue

Shall the City Council approve the attached lease agreement with the Auburn Area Chamber of Commerce?

Conclusion and Recommendation

Staff recommends that the City Council, **BY RESOLUTION**, approve the attached lease agreement with the Auburn Area Chamber of Commerce.

Background

In 2011, the City and the California Welcome Center entered into an agreement with the City of Auburn to lease a portion of Old City Hall at 1101 High Street. This move was a result of the recession and the fall-off of revenue most organizations were experiencing. At that time, the idea of moving the Auburn Area Chamber of Commerce (Chamber) to another portion of the building was also discussed but was not formally pursued. The Chamber rent for their current location at 601 Lincoln Way has become too costly. The relocation of the Chamber to 1101 High St will provide some financial relief, continuity between the Chamber and the California Welcome Center and allow for a more unified presence for promotion of the City and the greater Auburn area. For the past several months, representatives of the Chamber and City staff have discussed the moving of the Chamber operations by June 2014; the Chamber's current lease with Union Pacific Railroad expires June 2014.

The final lease, which is attached, has been approved by the Auburn Chamber of Commerce Board of Directors and is ready for the City Council to consider. Should the City Council approve this lease, it will be executed by staff which will allow the Chamber to initiate their improvements on the interior of facility in a timely fashion.

The lease will commence April 15, 2014 and extend for seven years at \$1.00 per year which was negotiated in consideration of the significant costs of improvements on the part of the Chamber necessary to prepare the space for occupancy. The other terms of the agreement are similar to those of the California Welcome Center.

Alternatives Available to Council; Implications of Alternatives

1. Adopt Staff Recommendations.
2. Adopt Amended Recommendations.

3. Do not adopt recommendations

Additional Information

There are improvements necessary to meet ADA compliance in the existing hallway bathrooms shown as Area 2 on the Site Plan. In this proposed lease the City would provide an allowance of up to \$12,500 to cover materials for these improvements and would retain the ability to use these facilities as needed for other community related functions. In addition, the City agrees to complete an ADA compliant ramp, railing and door on High Street for access to the building at an estimated cost of \$35,000.

Fiscal Impact

The Chamber will pay \$1.00 per year plus utility costs. The City agrees to cover \$12,500 in bathroom materials and construction of an ADA compliant ramp, railing and door on High Street estimated at \$35,000 for a total cost of approximately \$47,500.

Attachments

City of Auburn/Auburn Area Chamber of Commerce Commercial Office Lease
Resolution

CITY OF AUBURN

COMMERCIAL OFFICE LEASE

BY AND BETWEEN

CITY OF AUBURN,
A MUNICIPAL CORPORATION
("CITY")

AND

AUBURN AREA CHAMBER OF COMMERCE
("TENANT")

**CITY OF AUBURN
OFFICE LEASE**

This Lease, made and entered into as of this ____ day of _____, 2014, by and between the City of Auburn, a municipal corporation (herein called "City"), and the Auburn Area Chamber of Commerce, a California nonprofit mutual benefit corporation (herein called "Tenant").

WITNESSETH

For, and in consideration of, the mutual covenants hereof, City hereby leases to Tenant and Tenant hereby hires from City the Premises as hereinafter described, upon the terms and conditions hereinafter set forth.

1. Premises.

The leased premises ("Premises") consist of approximately 1,877 square feet of commercial space within the first floor of the Old City Hall Building, 1101 High Street - Suite 100, Auburn, CA ("Old City Hall"), the Premises are depicted on **Exhibit A**; this exhibit is incorporated herein and made part of this Lease.

2. Use of Premises.

A. The Premises may be used for commercial office purposes only. The specific use under this Lease shall be to house and operate the Auburn Area Chamber of Commerce. Any uses shall be in conformance with (i) applicable zoning regulations of the City of Auburn, and (ii) laws and rules imposed by any governmental agency. City has determined that Tenant's primary use as a commercial office in support of its mission so conforms.

B. Tenant shall be permitted to use, on a non-exclusive basis, the public restroom area identified in Exhibit A as "Area 2."

C. Tenant agrees that the use of the Premises, the development thereof and any construction thereon shall be in accordance with the applicable provisions of city codes and ordinances and any other state or federal law, code or regulation applicable to Tenant's use. City, in its proprietary capacity, shall assist Tenant to the greatest extent possible and as appropriate in assuring this compliance. Tenant acknowledges that nothing contained in this Lease shall be deemed to entitle Tenant to any City permit or other City approval necessary for the use or rehabilitation of the Premises, or waive any applicable City requirements relating thereto. This Lease does not (a) supersede, nullify or amend any condition which may be imposed by the City in connection with the use of the Premises, or (b) amend any City laws, codes or rules.

D. Tenant shall not use or allow any person to use the Premises that constitutes waste or nuisance, or that would unreasonably annoy other occupants and lessees of facilities and buildings in the Old City Hall Complex.

E. City reserves the right to maintain, develop and improve the Premises as it sees fit, regardless of the desires or views of Tenant, and without interference or hindrance from Tenant; provided that City's actions shall not substantially interfere with Tenant's use of the Premises in accordance with this Lease.

F. City shall maintain and keep in repair the Old City Hall (but not the interior of the Premises) and all publicly owned facilities of the Old City Hall complex. City reserves the right to direct and control all activities of Tenant in this regard to include restriction of Tenant's use of the Old City Hall Complex; provided that such activities do not substantially interfere with Tenant's use of the Premises in accordance with this Lease.

3. **[Reserved].**

4. **Term of Lease.**

The Term of this Lease shall be a period of seven (7) years commencing at 12:01 A.M. on April 15, 2014 (the "Effective Date") and ending at 11:59 P.M. on April 15, 2021, unless terminated earlier as provided in this Lease. There is no option to extend the term of this Lease. However, at Tenant's request to be made in writing six (6) months prior to the expiration of the term, City shall negotiate in good faith with Tenant to extend the terms of this Lease on condition that Tenant pay fair market rent, or if Tenant is unable to pay fair market rent, then the highest rent Tenant is able to pay, for the Premises.

5. **Fixed Rent.**

Except as provided herein, Tenant shall pay to City in lawful money of the United States of America, without deduction, offset or abatement at City's principal place of business, or at such place or places, or to such person or persons as may be designated from time to time by City, rent in the amount of one dollar (\$1.00) per year (the "Fixed Rent") payable on the effective date of the lease and on each annual anniversary of the effective date commencing on April 15, 2014, and continuing through the term of this Lease. All rent shall be paid by Tenant to City, in advance, at 1225 Lincoln Way, Auburn, CA, 95603, or any other place or places that City may from time to time designate by 30 day written notice given to Tenant.

6. **Repairs, Maintenance and Improvements.**

A. Tenant represents that Tenant has inspected and examined the Premises and accepts them in their present condition together with those agreed upon improvements specifically necessary for Tenant's occupancy of the Premises. It is further agreed that City shall not be required to maintain the Premises as originally accepted and make any improvements or repairs upon the leased Premises or any part of them, unless separately agreed to by the parties.

B. Tenant shall mitigate any hazardous materials within the Premises, including without limitation, lead and asbestos, to the satisfaction of the City's Public Works and Building Departments. Prior to performing any abatement work, Tenant shall prepare and submit to the City's Building Departments its abatement and demolition plan, and shall obtain a permit for such abatement and demolition work. City permit fees for tenant improvements shall be waived.

C. After completion of the abatement of any hazardous materials within the Premises, to the satisfaction of the City's Public Works and Building Departments, Tenant may commence the installation of such tenant improvements as it deems advisable. Prior to installing tenant improvements within the Premises, Tenant shall prepare (or have prepared) engineering drawings and plans and specifications (the "Plans and Specs") as may be required by the City's Building

Department. The Plans and Specs are subject to the prior written approval of the City's Building Department.

D. Tenant is responsible to purchase and install all heating, ventilation and air conditioning equipment as may be required for its use of the Premises, and to install a code-required fire alarm system for its portion of the Old City Hall.

E. Tenant is responsible to improve, at its cost, the public restrooms within Area 2, and the public access between the Premises and Area 2, as required to comply with the Americans with Disabilities Act. Provided, however, that City shall pay for the costs of materials required to upgrade Area 2, including the costs of toilets, sinks, faucets, fan, flooring and wall coverings, up to the amount of \$12,500. City shall reimburse Tenant for its materials costs incurred to upgrade Area 2 based upon invoices received accompanied by a statement executed by an officer of Tenant listing the invoices for which reimbursement is requested, including vendor, date of purchase, item purchased and amount, and stating that all such materials purchased have been installed in Area 2.

F. Tenant shall make no improvements to the Premises without first obtaining the written consent of the City. Any such improvements or alterations to the Premises must be in compliance with any and all governing building codes. Any permanent fixtures or improvements made to the Premises shall become the property of the City upon termination of the lease. As used in this paragraph, "permanent fixtures" refers to fixtures which cannot be removed from the Premises without causing damage to the Premises in excess of \$500. Tenant agrees to maintain, at Tenant's sole expense, the interior of the Premises of Area 1 depicted in Exhibit A hereto, and all improvements installed or constructed by Tenant to Area 2. Other than as set forth above with respect to Tenant's obligation to improve and maintain Area 2, City shall be responsible to maintain janitorial services to Area 2, the infrastructure of the Old City Hall and shall repair damage to the Old City Hall as needed. City will provide for landscaping and maintenance of the exterior of the Old City Hall.

G. Within six months after the date of this Lease, City shall improve, at its cost, the existing ramp, railing and door improvements at the High Street front entrance of the Old City Hall, so that such entrance complies with current Americans with Disabilities Act requirements.

7. Entry.

Tenant agrees that City, its agents or employees, upon reasonable notice, may enter upon the Premises at any time for the purpose of inspection of the Premises or for performing any necessary repair of Premises. Reasonable notice for purpose of inspection shall be telephonic notice at least 48 hours prior to entry, and telephonic notice at least five (5) days prior to entry for repairs, unless the repair is of an emergency nature as reported by Tenant, in which event City may enter the Premises immediately without prior notice.

8. Utilities.

City agrees to provide water to the Premises for reasonable use by Tenant. Tenant shall pay a pro rata cost of 20% for gas and electric and monthly sewer charges, to be remitted as billed monthly by the City. Tenant will be responsible for providing all other utilities and services to the premises, including, but not limited to, telephone, cable, garbage collection dedicated to Tenant's use.

9. Indemnification.

City shall not be liable to Tenant or any other person whomsoever for death or personal injury or for loss or destruction of, or damage to, property in, on or about the Premises and any improvement thereon, unless as a direct result of City's acts, errors, omissions or negligence. Upon the Effective Date of the Lease, Tenant shall, for the full term of this Lease, indemnify and save harmless City and its officers, agents and employees from and defend the same against any and all claims, liens, liability, expense (including attorneys' fees), losses and judgments arising from death or personal injuries or from the loss or destruction of, or damage to, property of any person whomsoever resulting from the acts, omissions or negligence of Tenant, Tenant's officers, agents, contractors, permittees or employees with respect to use of or Tenant's obligation to maintain the Premises and any improvements thereon.

10. Insurance.

A. Tenant shall obtain insurance coverage beginning on the Effective Date and continuing through the entire Lease term. The acceptable insurance shall be at least as broad as:

- (i) Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001);
- (ii) property insurance against all risks of loss to any tenant improvements or betterments; and

B. Tenant shall maintain limits no less than general liability \$1 million per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit shall apply separate to this Lease or the general aggregate limit shall be twice the required occurrence limit.

C. Any deductibles or self-insured retention must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retention as respects the City, its officers, officials, employees and volunteers; or Tenant shall provide a financial guaranty satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

D. The general liability policy is to contain, or be endorsed to contain, the following provisions:

(1) City, its officers, officials, employees and volunteers are to be covered as insured with respect to liability arising out of ownership, maintenance or use of that part of the Premises leased to Tenant, subject to Tenant's 20% pro-rata share of Premise occupancy.

(2) Tenant's insurance coverage shall be primary insurance as respects City, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officers, officials, employees or volunteers shall be excess of Tenant's insurance and shall not contribute with it. This provision is subject to a cap of Tenant's 20% pro-rata share of Premise occupancy.

(3) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be canceled except after 30 days' prior written notice by mail, or after 10 days prior written notice by mail if cancellation is due to non-payment of premium, has been given to City.

E. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII.

F. Tenant shall furnish City with original certificates and amendatory endorsements effecting coverage required by this Section 10. All certificates and endorsements are to be received and approved by City before any work or improvements or alterations to the Premises commence. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications at any time.

11. Events of Default by Tenant.

Each of the following events shall constitute "an event of default of Tenant":

A. Tenant's failure to pay the rent herein fixed for the payment hereof;

B. Tenant's failure to pay any other amounts owing hereunder within ten (10) business days after receipt of an invoice for such costs;

B. Tenant attempt to make or allow to be made any unauthorized subleasing, encumbrance, assignment or other transfer of the Premises.

C. The failure of Tenant to abide by the terms, covenants or conditions as specified in Section [2.A].

D. Tenant's failure, after 60 days' written notice from City, to keep, perform or observe any other term, covenant or condition of this Lease to be kept, performed or observed by Tenant;

E. Tenant's filing of a voluntary petition in bankruptcy, or the assignment of all, or substantially all, of Tenant's assets for the benefit of Tenant's creditors or the institution of proceedings in bankruptcy against Tenant or the appointment of a receiver of the assets of Tenant; provided, however, that if such proceedings or appointments are involuntary, then they shall not be considered an "event of default by Tenant," unless Tenant fails to procure a dismissal thereof within 60 days after the institution of such involuntary bankruptcy proceedings or the appointment of such receiver.

12. Results of Tenant's Default.

Upon the occurrence of an "event of default of Tenant," and after 60 days' written notice from City, City, besides any other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the Premises; such property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, Tenant. Should City elect to re-enter as herein provided, or should it take possession pursuant to any notice provided for by law, it may either terminate this Lease, relet the Premises and any improvements thereon or any part thereof for such term or terms (which may be for a term extending beyond the term of this Lease) and at such rental or rentals and upon such other terms and conditions as City, in its sole discretion, may deem advisable, with the right to make alterations and repairs to said Premises and improvements. Tenant shall be liable to City for all costs incurred prior to termination including, without limitation, Tenant's portion of water, electricity, sewer, insurance costs and costs to restore the Premises to its condition as of the date of this Lease, reasonable wear and tear excepted.

13. Nonwaiver of Defaults.

The waiver by City of any breach by Tenant of any term, covenant or condition hereof shall not operate as a waiver of any subsequent breach of the same or of any other term, covenant or condition of this Lease. No term, covenant or condition hereof can be waived except by the written consent of City and forbearance or indulgence by City, in any regard whatsoever, shall not constitute a waiver of the terms, covenants or conditions to be performed by Tenant to which the same may apply, and until complete performance by Tenant of the term, covenant or condition, City shall be entitled to revoke any remedy available to it hereunder or by law, despite such forbearance or indulgence.

14. Subordination for Benefit of City.

If City desires this Lease to be subordinated to any mortgage, deed of trust or other encumbrance ("Fee Mortgage") now or hereafter placed upon the Old City Hall by City, and all advances, whether obligatory or optional made on the security thereof, and to all renewals, modifications, consolidations, replacements and extensions thereof, this Lease, at City's election, shall be subordinate to any such Fee Mortgage provided City first obtains from the lender a written agreement that provides substantially as follows: As long as Tenant performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance, shall affect Tenant's rights under this Lease.

Subject to the foregoing, Tenant agrees to execute any documents required to effectuate such subordination, and failing to do so within 10 days after City's written request to Tenant therefore, does hereby irrevocably appoint City as Tenant's attorney-in-fact in Tenant's name to do so.

15. Tenant's Encumbrance.

Tenant may not encumber Tenant's interest in the Premises or in any improvements Tenant places thereon by mortgage, deed of trust or other instrument.

16. Rights Upon Termination.

If Tenant is not in default hereunder, Tenant shall have the right to remove only the trade fixtures which Tenant may have placed or installed upon the Premises during the term of the Lease; provided, however, that upon said removal, Tenant shall repair, at Tenant's own expense, any damage resulting therefrom. The term "trade fixtures" means those improvements, other than structures or structural modifications installed by Tenant, used for the conducting of Tenant's business and which can be removed without interference or damage to structures.

17. Subletting/Assignment.

A. Tenant may not sublease or assign all or any portion of the Premises or the Improvements constructed or installed on the Premises without the prior written consent of City, which consent may be withheld in City's sole and absolute discretion. Any such sublease consented to by City shall provide (i) such subleasing shall be subject to the terms of this Lease, (ii) such subleasing shall comply with all applicable statutes and regulations, (iii) all building improvements and alterations constructed on the Premises shall have been approved by City pursuant to Section 6 of this Lease, (iv) Tenant shall remain liable under this Lease; (v) the Fixed Rent shall be adjusted to fair market rent, and (vi) each sublease shall contain a provision satisfactory to City requiring the subtenant, if City shall so demand, to attorn to City if Tenant defaults under this Lease, and if the

subtenant is notified of Tenant's default and instructed to make subtenant's rental payments to City, but City shall have no obligation to recognize the subtenant or to allow any subtenant to remain in possession upon the default of Tenant.

B. City's consent to an assignment of Tenant's interest in this Lease shall be conditioned upon (i) execution by Tenant and its assignee (the "Assignee") of an assignment and assumption agreement in form satisfactory to City, (ii) payment by Tenant or Assignee of all state, local and any other excise, transfer or documentary taxes imposed, if any, as a result of the execution of such assignment, and (iii) Fixed Rent adjusted to equal fair market rent.

C. If Tenant is a corporation or a partnership, any change in Tenant which would be a "change in ownership" pursuant to California Revenue and Taxation Code Sections 60, et seq., shall be deemed an assignment subject to City's consent. It shall not be unreasonable for City to withhold or condition its consent based on the prospective assignee's financial strength, experience in operating the type of business permitted, credit history or any other factor which City reasonably believes germane to a tenant's ability and willingness to perform the obligations of this Lease. No such assignment shall release Tenant of further liability under this Lease.

D. A fee will be charged by City for processing or approval of any sublease or assignment requested by Tenant including any and all administrative, legal and other costs reasonably incurred by City. The minimum charge by City for the review, processing or approval of such request shall be \$200.00.

18. Effect of Failure to Comply.

No encumbrance, assignment or other transfer, whether voluntary, involuntary, by operation of law, under legal process, through a receivership, bankruptcy or otherwise, shall be valid or effective without the prior written consent and approval of City. If Tenant attempts to make or allow to be made any subleasing, encumbrance, assignment or other transfer then any of the foregoing events shall be deemed a breach of the conditions and restrictions of this Lease, and upon such breach, City may, at its option, terminate this Lease at once by written notice, and upon such termination this Lease shall end and be of no further force.

19. Condemnation.

If, during the term of this Lease there is a taking, or transfer of, or damage to all or any part of the Premises (Premises as used herein shall include all appurtenant interests such as access rights) for a public use by any individual or entity, public or private, possessing the power of eminent domain, whether by condemnation proceedings or otherwise (hereinafter referred to as "appropriation"), the rights and obligations of City and Tenant with regard to such appropriation shall be governed by the provisions of this article. City warrants that it will not engage in any action as contemplated by this section. Should the City engage in such action, this Section 19 shall be invalid.

A. The date of taking, as used in this article, is defined as the earliest of the following dates: (i) the date legal possession is taken, which is defined as the date, if any is established, after which the condemnor may take possession of the property as stated in an order authorizing the condemnor to take possession; (ii) the date a final order of condemnation or final judgment is filed

or recorded or the date a deed is recorded in the event of a voluntary sale; and (iii) the date physical possession of the property is taken.

B. Total taking means an appropriation of the entire Premises or so much thereof as to prevent or substantially impair the conduct of Tenant's business unless Tenant elects to continue the Lease in effect. If during the term of this Lease there is an appropriation of the Premises which amounts to a total taking as herein defined, then the leasehold estate of Tenant in and to the Premises shall cease and terminate as of the date of such taking, and all rentals and other charges payable by Tenant to City hereunder and attributable to the Premises shall be paid up to the date of such taking.

C. The term "partial taking" shall mean the taking of a portion only of the Premises which does not constitute a total taking as defined above. If during the term of this Lease there shall be a partial taking of the Premises, this Lease shall terminate as to the portion of the Premises so taken at the date of taking as herein defined, but said Lease shall continue in force and effect as to the remainder of the Premises. The rental payable hereunder by Tenant shall, as of the date of taking, be adjusted so that Tenant shall be required to pay for the remainder of the term only such portion of such rent as the value of the part of the Premises remaining after the taking bears to the value of the entire Premises at the date of taking.

D. In the event the condemning agency shall abandon an eminent domain proceeding, either party hereto shall have the right to contest the condemnor's abandonment and a right to its respective costs and disbursements as defined and provided for in California law. If after the condemnor takes possession or the Tenant moves from the property sought to be condemned in compliance with an order of possession, the condemnor abandons the proceeding as to such property or a portion thereof, or if it is determined that the condemnor does not have authority to take such property or portion thereof by eminent domain and the condemnor is required by law to deliver possession of such property or such portion thereof to the party entitled to the possession thereof and pay damages as provided for in California law, then Tenant shall receive the award for costs and damages incurred by reason of Tenant being removed from possession of the Premises, but Tenant shall be entitled to retake possession of the Premises and, in the event of such repossession by Tenant, all of the terms of this Lease shall remain in operation and effect.

E. All compensation and damages awarded for the taking of the Premises or any portion thereof shall, except as otherwise herein provided, belong to and be the sole property of City. However, any award that may be made for the taking of or injury to the improvements, and all other improvements constructed by Tenant on the Premises shall be equitably apportioned between Tenant and City if, at the time of the taking, the expected useful life of the improvements extends beyond the Termination Date provided for in Section 4. Otherwise, Tenant shall be entitled to such award. Tenant shall be entitled to any award for damage to Tenant's business or on account of any cost or loss Tenant may sustain in the removal of Tenant's fixtures, equipment and furnishings, or as a result of any alterations, modifications or repairs which may be reasonably required by Tenant in order to place the remaining portion of the Premises not so condemned in a suitable condition for the continuance of Tenant's tenancy. Tenant shall also be entitled to that portion of any award that may be attributable to any severance damages to the remaining leasehold interest and to any improvements constructed by Tenant.

F. Each party shall bear his own costs, attorneys' fees, appraiser's fees and all other costs in connection with any matter contained in this article, except as may be otherwise provided.

G. Neither party hereto shall grant a right of entry to any condemnor without the written consent of the other party hereto.

20. Estoppel Certificates.

City and Tenant shall, respectively, at any time and from time to time upon not less than 10 business days' prior written request by the other, deliver to the requesting party an executed and acknowledged statement in writing certifying:

A. That this Lease is unmodified and in full force and effect (or if there has been any modification(s) thereof that the same is in full force and effect as modified, and stating the nature of the modification or modifications);

B. That to its knowledge the requesting party is not in default under this Lease (or if any such default exists, the specific nature and extent thereof), and

C. The date to which rent and other charges have been paid in advance, if any. Each certificate delivered pursuant to this section may be relied on by any prospective purchaser or transferee of the Premises or of City's or Tenant's interest hereunder or by any fee mortgagee of the Premises or of City's or Tenant's interest hereunder or by any assignee of any such mortgagee.

A fee will be charged by City for processing or approval of any estoppel certificate requested by Tenant including any and all administrative, legal and other costs reasonably incurred by City. The minimum charge by City for the review, processing or approval of such request shall be \$200.00.

21. Mediation/Arbitration.

All claims, disputes and controversies arising out of or in relation to the performance, interpretation, application or enforcement of this Lease, including, but not limited to, breach thereof ("Mediation/Arbitration Dispute"), except (a) the payment of rent, which Tenant acknowledges is an independent covenant not subject to offset or deduction, and (b) the matters described in Section 21.B (4), shall be decided under this Section 21 pursuant to mediation, and if necessary, arbitration. If Tenant defaults in the payment of rent, this Section 21 shall not apply and City may pursue any and all legal and equitable remedies provided by law, including, without limitation, an unlawful detainer action, writ of possession, and a money judgment for unpaid rent.

A. Mediation.

(1) Any Mediation/Arbitration Dispute shall be referred to mediation before, and as a condition precedent to, the initiation of any arbitration proceeding.

(2) The parties shall submit any Mediation/Arbitration Dispute to an impartial neutral mediator selected by mutual consent of the parties. In the event the parties cannot agree on the selection of a mediator, the Mediation/Arbitration Dispute shall be referred to JAMS/Endispute, a professional mediation service. The parties shall equally bear the cost of mediation fees, subject only to the exception set forth in the next paragraph.

(3) If during the mediation a party ("offering party") makes a written offer of compromise to another party which is not accepted by such party ("refusing party") and the refusing

party fails to obtain a more favorable result through arbitration, the refusing party shall pay the offering party all costs and expenses, including reasonable attorney fees and the cost of the mediator and arbitrator, incurred from the time the offer is refused.

B. Arbitration.

(1) A Mediation/Arbitration Dispute which is not resolved through mediation, as set forth above, shall be decided by neutral, binding arbitration and not by administrative proceeding or court action, except as provided by California law for judicial review of arbitration proceedings. The arbitration shall be conducted in accordance with the rules governing the conduct of arbitration proceedings set forth in the California Code of Civil Procedure and the California Rules of Court. The parties may agree in writing to use different rules. The parties shall have the right to discovery in accordance with the provisions of the California Code of Civil Procedure. Judgment on any award of the arbitrator may be confirmed and entered by the court as provided for by California law.

(2) An arbitrator may be selected by mutual consent of the parties. If the parties cannot agree on selection of an arbitrator within 15 days from the date either party first requests arbitration, an arbitrator familiar with handling similar disputes shall be appointed by JAMS/Endispute. The cost of the arbitrator, arbitration costs and attorney fees shall be borne by the parties as may be determined by the arbitrator.

(3) Any demand for arbitration must be made in writing to the other party. No demand for arbitration may be made after the date on which the institution of legal proceedings based on the claim is barred by the applicable statute of limitations.

(4) The parties shall each have the right to file with a court of competent jurisdiction an application for temporary or preliminary injunctive relief, writ of attachment, writ of possession, temporary protective order, or appointment of a receiver if the arbitration award to which the applicant may be entitled may be rendered ineffectual in the absence of such relief or if there is no other adequate remedy. This application shall not waive a party's arbitration rights under this Lease.

(5) The arbitrator shall have the power to grant legal and equitable remedies, and award damages, that may be granted or awarded by a judge of the Superior Court of the State of California or the Federal District Court of the Eastern District of California. The arbitrator shall prepare and provide to the parties a written decision on all matters subject to the arbitration, including factual findings and the reasons that form the basis of the arbitrator's decision. The arbitrator shall not have the power to commit errors of law or legal reasoning and the award of the arbitrator shall be vacated or corrected for any such error or any other grounds specified in Code of Civil Procedure Section 1286.2 or Section 1286.6. The award of the arbitrator shall be mailed to the parties no later than 30 days after the close of the arbitration hearing. The provisions of the California Evidence Code shall apply to the arbitration hearing. The arbitration proceedings may be recorded by a certified shorthand court reporter. The party requesting a reporter shall pay for the reporter and if both sides request a reporter, the cost of the reporter shall be divided equally. Written transcripts of the proceedings may be prepared at the request of a party. A party requesting a transcript shall pay for the cost thereof.

22. Consent Not to be Unreasonably Withheld.

Whenever the consent, approval or permission is required hereunder by either Tenant or City, such consent, approval or permission is not to be unreasonably withheld, unless expressly provided otherwise hereunder.

23. Relationship Between the Parties.

City is neither a joint venturer with nor a partner or association of Tenant with respect to any matter provided for in this Lease. Nothing herein contained shall be construed to create any such relationship between the parties or to subject City to any obligation of Tenant hereunder.

24. Time of the Essence.

Time is of the essence of this Lease.

25. Lease Made in California.

This Lease has been made and shall be construed in accordance with the laws of the State of California. All duties, obligations and liabilities of City and Tenant with respect to the Premises are expressly set forth herein and this Lease can only be amended in writing.

26. Headings.

The headings contained herein are for convenience of reference and are not intended to define or limit the scope of any provisions of this Lease.

27. Notices.

All notices to be given hereunder shall be in writing and shall be deemed given when received in the United States mail, postage prepaid, certified or registered, addressed as follows, or to such other address as from time to time may be designated by a party by written notice to the other parties:

A. City of Auburn
Office of City Manager
1225 Lincoln Way
Auburn, CA 95603

B. "Tenant"

*Auburn Chamber of Commerce
1101 High Street, Suite 100
Auburn CA 95603*

28. Surrender and Merger.

The voluntary or other surrender or termination of this Lease by Tenant or a mutual cancellation thereof shall not work a merger and shall, at the option of City, terminate all or any existing subleases or subtenancies or may, at the option of City, operate as an assignment to City of all such subleases or subtenancies.

29. Successors and Assigns.

Subject to the terms and conditions of Section 19 hereof, the provisions of this Lease shall bind and inure to the benefit of the successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Lease as of the day and year first above written.

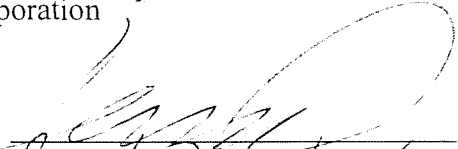
“CITY”

“TENANT”

CITY OF AUBURN, CALIFORNIA, a
Municipal Corporation

AUBURN AREA CHAMBER OF
COMMERCE, a nonprofit mutual benefit
corporation

By: _____
Name: _____
Its: _____

By: 
Its: Board President
Name: Carolyn Metzger

ATTEST:

Amy M. Lind, Deputy City Clerk
APPROVED AS TO FORM:

Michael Colantuono, City Attorney

EXHIBIT A

DESCRIPTION OF THE PREMISES AREA 1 AND AREA 2

EXHIBIT A

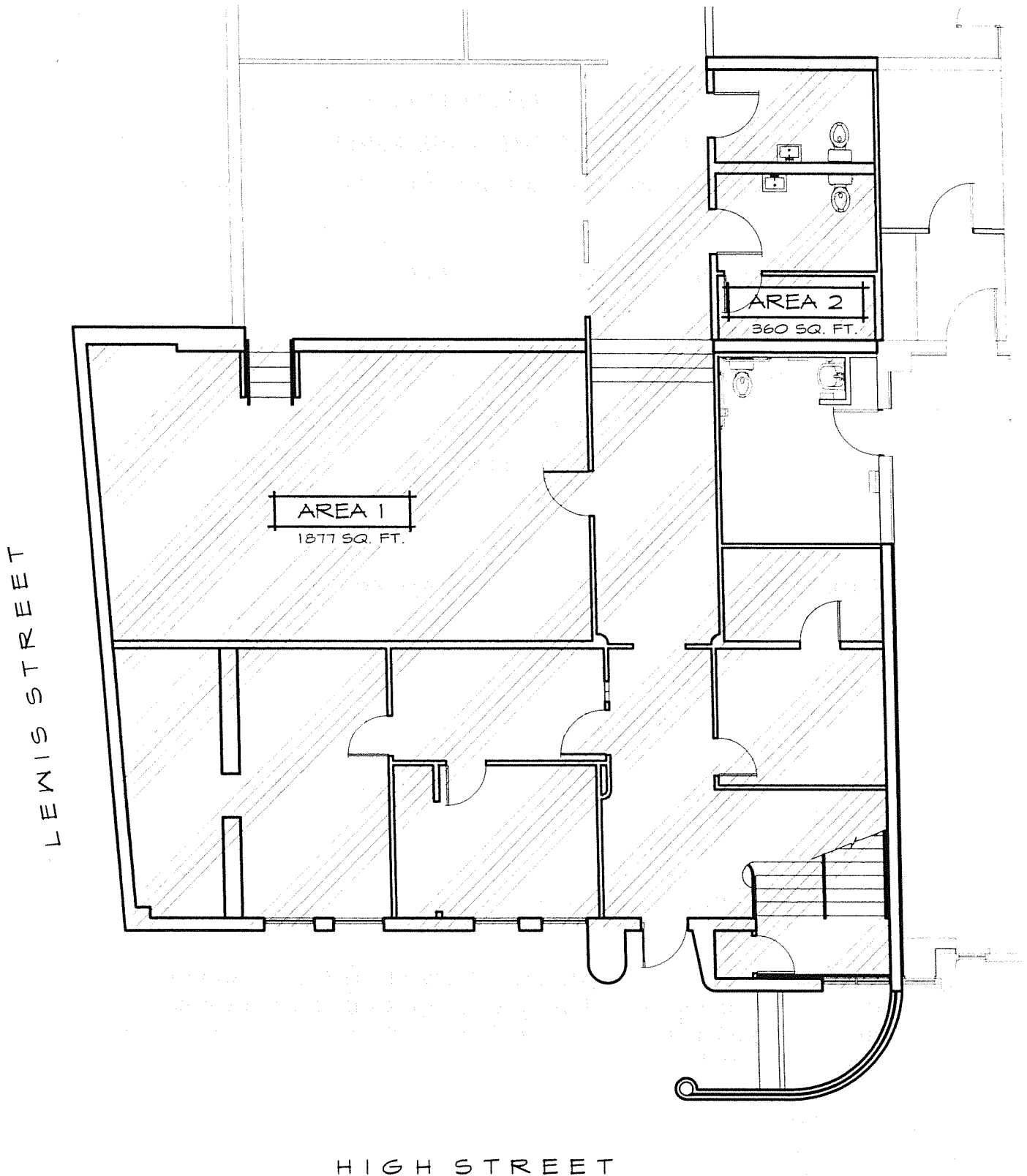
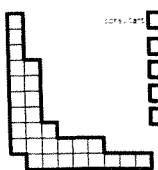


EXHIBIT "A"



DATE: 04-04-14
 SCALE: 1/4" = 1'-0"
 DRAWN BY: jh
 CHECKED BY: [blank]
 PROJECT: [blank]

SITE PLAN
 1405
 jh

PROJECT: BUILDING REMODEL FOR
CHAMBER LEASE AREA
 CITY OF AUBURN
 1101 HIGH STREET SUITE 100
 AUBURN, CA

j.lee buckingham, AIA
architect
 13620 LINCOLN WAY, SUITE 200
 AUBURN CALIFORNIA 95603
 (530) 886-0750 C 9627

A1
 165

RESOLUTION NO. 14-

RESOLUTION APPROVING THE LEASE AGREEMENT BETWEEN THE CITY OF
AUBURN AND THE AUBURN AREA CHAMBER OF COMMERCE

THE CITY COUNCIL OF THE CITY OF AUBURN DOES HEREBY RESOLVE:

That the City Council of the City of Auburn does hereby approve the
lease agreement between the City of Auburn and the Auburn Area Chamber of
Commerce. The City Manager of the City of Auburn and/or his designee is
authorized and directed to execute the lease agreement on behalf of the City of
Auburn.

A true and correct copy of said Lease Agreement is attached hereto as Exhibit
"A."

DATED: April 14, 2014

Bridget Powers, Mayor

ATTEST:

Stephanie L. Snyder, City Clerk

I, Stephanie L. Snyder, City Clerk of the City of Auburn, hereby certify
that the foregoing resolution was duly passed at a regular session meeting of
the City Council of the City of Auburn held on the 14th day of April 2014 by the
following vote on roll call:

Ayes:

Noes:

Absent:

Stephanie L. Snyder, City Clerk